

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CERCLA SECTION  
122(h)(1) AGREEMENT**

**ARKANSAS MUNICIPAL WASTE TO ENERGY SITE**

**CERCLA SECTION 122(h)(1) AGREEMENT**

## TABLE OF CONTENTS

I. <u>JURISDICTION</u>	1
II. <u>BACKGROUND</u>	1
III. <u>PARTIES BOUND</u>	4
IV. <u>STATEMENT OF PURPOSE</u>	4
V. <u>DEFINITIONS</u>	5
VI. <u>PAYMENT OF RESPONSE COSTS</u>	6
VII. <u>FAILURE TO COMPLY WITH AGREEMENT</u>	7
VIII. <u>COVENANT NOT TO SUE BY EPA</u>	8
IX. <u>RESERVATIONS OF RIGHTS BY EPA</u>	8
X. <u>COVENANT NOT TO SUE BY SETTLING PARTY</u>	9
XI. <u>EFFECT OF SETTLEMENT/CONTRIBUTION</u>	10
XII. <u>SITE ACCESS</u>	11
XIII. <u>ACCESS TO INFORMATION</u>	11
XIV. <u>RETENTION OF RECORDS</u>	12
XV. <u>CERTIFICATION</u>	13
XVI. <u>NOTICES AND SUBMISSIONS</u>	13
XVII. <u>INTEGRATION/APPENDICES</u>	14
XVIII. <u>PUBLIC COMMENT</u>	14
XIV. <u>EFFECTIVE DATE</u>	14

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

2012 AUG 13 PM 2:16  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:	§	SETTLEMENT AGREEMENT
	§	
ARKANSAS MUNICIPAL WASTE TO ENERGY	§	U.S. EPA Region 6
SITE (SITE), OSCEOLA, ARKANSAS	§	CERCLA Docket No. 06-06-11
	§	
THERMO FISHER	§	PROCEEDING UNDER SECTION
SCIENTIFIC INC.	§	122(h)(1) OF CERCLA
	§	42 U.S.C. § 9622(h)(1)

---

**I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated to the Superfund Division Director by EPA Delegation No. R6-14-14-D (June 8, 2001). This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice (DOJ).

2. This Settlement Agreement is made and entered into by EPA and Thermo Fisher Scientific Inc. (Settling Party). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

**II. BACKGROUND**

3. This Settlement Agreement concerns the Arkansas Municipal Waste to Energy Warehouse (Site) located at 420 West Parsons Drive, Osceola, Arkansas. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). EPA Region 6 has information which indicates that hazardous substances, pollutants, or contaminants, have been released or that there is a threat of such a release into the environment at the Site.

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State of Arkansas undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future consistent with the factual information provided below. This Site has not been placed on National Priorities List (NPL), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as implemented under 40 C.F.R. Part 300, Appendix B.

a. By letter dated June 2, 2004, the Arkansas Department of Environmental Quality (ADEQ) formally requested EPA's assistance concerning the Site. The Site is located at 420 West Parsons Drive, Osceola, Arkansas, and included approximately 8,302 drums at the time ADEQ requested EPA's assistance. Many of these drums contained CERCLA hazardous substances. Some of the drums include ignitable and flammable wastes. A daycare facility is located in close proximity to the Site. As described in the conditions provided below, the Site presents an imminent and substantial endangerment to human health and the environment.

b. The Site was formerly associated with the operation of the Arkansas Municipal Waste-to-Energy incineration facility operated at 100 Incinerator Road, Osceola, Arkansas. By letter dated September 29, 2000, the City of Osceola was granted the authority by ADEQ to operate the incinerator facility. In addition, a company named Arkansas Municipal Waste to Energy Company (AMWE) operated the municipal waste incinerator facility under contract with the City of Osceola. In addition to municipal wastes, AMWE was permitted to receive medical wastes, non-hazardous and industrial wastes. AMWE is the former operator of the Site. AMWE ceased operations in 2003, and filed for bankruptcy in 2004. As a result of a community complaint in February 2003, ADEQ conducted investigatory activities at the Site.

c. While investigating the AMWE incinerator facility, ADEQ inspectors discovered the Site located at 420 West Parsons Drive, Osceola, Arkansas. AMWE had placed thousands of drums and other containers of medical and industrial wastes in the Parsons Warehouse located at the Site. AMWE did not have authorization to operate the Site for storing medical, hazardous and industrial wastes. At the same time, AMWE made representations to its customers that AMWE incinerated the drums and containers shipped to AMWE for incineration, while the drums and containers were actually stored at the Site.

d. Some of the drums/containers observed at the Site were in poor condition and spills on the warehouse floor were observed as well. Some of the drums were improperly stored and stacked three-high. In addition, the warehouse structure remains in poor condition although the ADEQ took measures to stabilize the roof. The condition of the warehouse generated security concerns requiring the Arkansas State Court to take action during December 2003. The Court ordered the AMWE to secure the Site by locking all doors and boarding up broken windows at the Site warehouse. EPA also engaged in response measures designed to stabilize the structural integrity of the Site Warehouse from June 2004 through September 2004.

e. ADEQ's March 2003 through April 2004, and EPA's 2004 through 2009 investigative work, which also included sampling of drums/containers belonging to the Settling Party, revealed the presence of CERCLA hazardous substances at the Site. Investigations confirmed the

presence of wastes that exhibited RCRA hazardous waste characteristics including highly ignitable wastes; flammable wastes; corrosive wastes; trichlorofluoromethane; methyl chloride; benzene; toluene; ethylbenzene; xylene; 2-butanone; 1-2-4- trimethylbenzene; 1-3-5- trimethylbenzene; 2-hexanone; styrene; formaldehyde; and radioactive wastes.

f. Prior to EPA's involvement in this removal action, approximately 20,000 drums/containers were stored at the Site. After working with several parties who sent drums to the Site, several thousand drums/containers of waste were removed from the Site pursuant to AQEQ's enforcement efforts. Due to the presence of a large volume of CERCLA hazardous substances; the presence of highly flammable and ignitable wastes; the poor condition of some of the drums/containers; the poor structural integrity of the warehouse; the stored drums/containers stacked three-high; and the close proximity to a day care facility, the Superfund Division Director authorized an emergency removal action on June 8, 2004. This classic emergency removal action included perimeter air monitoring, inventory of the drums/containers stored, stabilization, sampling of the drums/containers of waste at the Site, and stabilization of the warehouse building.

g. Pursuant to an August 19, 2004, Administrative Order on Consent between EPA and Pollution Control Industries, Inc. (PCI), a large number of drums (i.e., approximately 7,267) were removed from the Site under oversight conducted by EPA. A small number of drums (i.e., eight) containing low-level radioactive wastes were removed from the Site pursuant to an August 2, 2007, Administrative Order on Consent between EPA and TestAmerica (formerly known as Severn Trent Laboratories).

h. The Settling Party conducted business activities which resulted in the transportation and generation of drums/containers of waste shipped to the Site for disposal. Many of the Settling Party's drums/containers contained hazardous substances identified in Paragraph 5(e). Approximately 200 drums, most of which contained hazardous substances, were removed pursuant to a July 9, 2008, Administrative Order on Consent between EPA and the Settling Party.

i. Approximately 708 drums/containers of waste remain at the Site. Consistent with the drums/containers that have already been removed, the remaining drums/containers will also have to be removed from the warehouse, and transported to a CERCLA approved facility for disposal. The removal of the remaining drums is necessary in light of the continuing hazards presented by the Site. Future soil sampling will be needed at the Site pursuant to the classic emergency removal action declared by EPA on June 8, 2004, to determine if further releases of hazardous substances into the environment occurred at the Site. Although no soil sampling has been conducted to date pursuant to the classic emergency removal action, EPA anticipates that such costs will total \$200,000 or less.

j. According to EPA records, the remaining drums/containers have been sampled. The EPA 2004 through 2008 response activities, which included the sampling of drums/containers revealed the presence of CERCLA hazardous substances and RCRA hazardous waste

characteristics identified in Paragraph 5(e) of this Settlement Agreement.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. The Settling Party arranged for the disposal of drums/containers containing hazardous substances to the Site property where hazardous substances have been released into the environment.

7. EPA prepared administrative records for the final response actions selected and implemented at the Site. Per cost documentation completed and maintained by EPA, EPA has incurred past response costs at or in connection with the Arkansas Municipal Waste to Energy Site in the total amount of approximately \$5,351, 574.05, through September 30, 2009.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. STATEMENT OF PURPOSE**

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to the reservation of rights included in Section IX (Reservation of Rights by EPA). In addition, the Settling Party agrees to take reasonable steps with respect the hazardous substances located on the Site property owned by the Settling Party; to cooperate with, provide, and ensure present and future access to the property owned by the Settling Party; to comply with information requests and provide legally required notices concerning Site property. The Settling Party neither owns, nor has any property interest at the Site. This agreement will also resolve any and all response costs claims that EPA may have under the Administrative Order on Consent for

Removal Action dated July 9, 2008, between EPA and the Settling Party.

## **V. DEFINITIONS**

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Settlement Agreement shall control.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et. seq.*
- c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- e. "Financial Information" shall mean those financial documents identified by EPA.
- f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.
- h. "Parties" shall mean EPA and Settling Party.
- i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- j. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- k. "Settling Party" shall mean Thermo Fisher Scientific Inc. (Thermo Fisher).

l. "Site" shall mean the Arkansas Municipal Waste to Energy warehouse facility located at 420 West Parsons Drive, Osceola, Arkansas.

m. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

n. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through September 30, 2010, plus interest on all such costs running through the date payment is made. Future soil sampling costs incurred as part of the classic emergency removal action are also included within the definition of past response costs. EPA estimates that the classic emergency removal action soil sampling costs will total \$200,000 or less. All response costs incurred by EPA under the Administrative Order on Consent for Removal Action dated July 9, 2008, between EPA and the Settling Party, are also included within the definition of Past Response Costs.

o. "Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XIV.

#### **VI. PAYMENT OF RESPONSE COSTS**

12. Within 30 days after the effective date of this Settlement Agreement as defined by Paragraph 40, Settling Party shall pay to the EPA Hazardous Substance Superfund \$220,000.00. Payment shall be made by Electronic Funds Transfer (EFT) in accordance with current EFT procedures provided below, and shall be accompanied by a statement identifying the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 06 SY, the EPA CERCLA Docket No. 06-06-11, and shall be sent to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

12.a. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID #06 SY, and the EPA CERCLA Docket No. 06-06-11.



13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the EPA Hazardous Substance Superfund. The above notice shall be sent to:

Chief, Enforcement Assessment Section (6SF-TE)  
U.S. Environmental Protection Agency, Region 6  
Superfund Division  
1445 Ross Avenue  
Dallas, TX 75202-2733

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

14. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15.a. If any amounts due under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$8,500 per violation per day that such payment is late.

15.b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID #06 SY, and the EPA Docket No. 06-06-11, and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
ATTN: COLLECTION OFFICER FOR SUPERFUND  
Arkansas Municipal Waste to Energy Site 06 SY

15.c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # 06 SY and the EPA CERCLA Docket No. 06-06-11. The above notice shall be sent to:

Chief, Enforcement Assessment Section (6SF-TE)  
U.S. Environmental Protection Agency, Region 6  
Superfund Division

1445 Ross Avenue  
Dallas, TX 75202-2733

15.d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

#### **VIII. COVENANT NOT TO SUE BY EPA**

18. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs, as defined in Paragraph 11(n), and drum removal and soil sampling costs addressed in Paragraph 5(i). This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

#### **IX. RESERVATIONS OF RIGHTS BY EPA**

19. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- f. liability arising from the Settling Party's failure to take reasonable steps with respect the hazardous substances located on the Site property owned by the Settling Party; to cooperate with, provide, and ensure present and future access to the property owned by the Settling Party; to comply with information requests and provide legally required notices concerning Site property.

20. Notwithstanding any other provision of this Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, based upon new information or noncompliance with this Settlement Agreement.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue; or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **X. COVENANT NOT TO SUE BY SETTLING PARTY**

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution; the State of Arkansas Constitution, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.

§§ 9607 and 9613, relating to the Site.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Claims against De Minimis Parties: Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that it may have for response costs relating to the Site against any person that has entered into a CERCLA Section 122(g), 42 U.S.C. § 9622(g) de minimis settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

25. Except as provided in Paragraph 24, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlement agreements that give rise to contribution protection pursuant to Section 113(f)(2).

26. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Party is entitled, as of the effective date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs not reserved by EPA, as defined in Paragraph 11(n), soil sampling costs addressed in Paragraph 5(i), and response costs incurred under the Administrative Order on Consent for Removal Action dated July 9, 2008, between EPA and the Settling Party. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations.

27. In the event that the Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 24, the Parties agree that this Settlement Agreement constitutes an

administrative settlement pursuant to which the Settling Party has resolved its liability to the United States, as of the effective date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for matters addressed as defined above.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

## **XII. SITE ACCESS**

29. With respect to Site property owned by the Settling Party, or any other property where access is needed to implement present or future response measures at the Site, the Settling Party shall provide the following assistance. Upon the effective date of this Agreement, Settling Party agrees to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Party to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);

30. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XIII. ACCESS TO INFORMATION**

31. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement,

including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

### 32. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XIV. RETENTION OF RECORDS**

34. Until 10 years after the effective date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records, and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may

assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

#### **XV. CERTIFICATION**

36. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;
- b. if requested by EPA, submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and
- c. if requested by EPA, fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

#### **XVI. NOTICES AND SUBMISSIONS**

37. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Chief, Enforcement Assessment Section (6SF-TE)  
U.S. Environmental Protection Agency, Region 6  
Superfund Division  
1445 Ross Avenue  
Dallas, TX 75202-2733

As to Settling Party:

Seth Hoogasian, General Counsel  
Thermo Fisher Scientific Inc.  
81 Wyman Street  
Waltham, MA 02454-9046; and

Dean A. Calland, Esq.  
Babst, Calland, Clements, and Zomnir, PC  
Two Gateway Center, Sixth Floor  
Pittsburgh, PA 15222

**XVII. INTEGRATION/APPENDICES**

38. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

**XVIII. PUBLIC COMMENT**

39. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

**XIV. EFFECTIVE DATE**

40. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 39 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

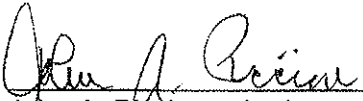


The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-06-11, In the Matter Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Settling Party certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind the party he represents to this document.

Agreed this 10<sup>th</sup> day of February 2012.

For: Thermo Fisher Scientific Inc. (Settling Party)

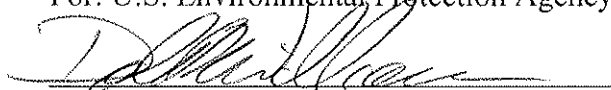
A handwritten signature in dark ink, appearing to read "John A. Piccione", is written over a horizontal line.

John A. Piccione, Assistant Secretary  
Thermo Fisher Scientific Inc.  
81 Wyman Street  
Waltham, MA 02454-9046

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-06-11, In the Matter of Arkansas Municipal Waste to Energy Site.

It is so ORDERED and Agreed this 13<sup>th</sup> day of August 2012.

For: U.S. Environmental Protection Agency

A handwritten signature in dark ink, appearing to read 'P. Phillips', is written over a horizontal line.

Pamela Phillips, Acting  
Superfund Division Director, Region 6  
U. S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, TX 75202-2733

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-06-11, In the Matter of Arkansas Municipal Waste to Energy Site.

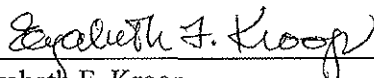
For: U.S. Department of Justice

May 22, 2012



Bruce S. Gelber  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

May 22, 2012



Elizabeth F. Kroop  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611